



**The CPB • WGBH
National Center for
Accessible Media**

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June 26, 1998

Federal Communications Commission
Office of the Secretary
1919 M Street, NW Room 222
Washington, D.C. 20554

To the Secretary,

Please accept the enclosed original and five copies of comments from the CPB/WGBH National Center for Accessible Media (NCAM) regarding Implementation of Section 255 of the Telecommunications Act of 1996 (WT Dkt. No. 96-198).

We welcome the opportunity to comment on this matter and look forward to working with you on implementation of the Commission's rules.

Sincerely,

Larry Goldberg
Director

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

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In the Matter of)
Implementation of Section 255 of the) WT Dkt. No. 96-198
Telecommunications Act of 1996)
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COMMENTS OF
THE CPB/WGBH NATIONAL CENTER FOR ACCESSIBLE MEDIA

A division of the
WGBH Educational Foundation

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COMMENTS OF

I. Introduction

1. The CPB/WGBH National Center for Accessible Media (NCAM) submits these comments to the Federal Communications Commission (FCC or Commission) on its proposed Section 255 rules. NCAM is the research and development and education arm of WGBH's Media Access division which consists of The Caption Center, Descriptive Video Service®, and NCAM. WGBH is Boston's public broadcaster and has been a pioneer in making media accessible for people with disabilities since 1971.

2. NCAM has been involved in helping make new media and telecommunications accessible through valuable partnerships with consumers, corporations, the Federal government, and numerous non-profit organizations throughout the world. Our efforts to encourage universal design and disability access principles in multimedia, the World Wide Web, digital television, movie theaters, and other venues have demonstrated practical, successful, and useful means for enhancing access to information and telecommunications technologies.

3. We applaud the FCC for issuing proposed rules to implement Section 255 of the Telecommunications Act of 1996. Increased access to telecommunications equipment and services is critical to expanding employment, educational, and recreational opportunities for individuals who are deaf or hard of hearing or blind or visually impaired. We urge the FCC to adopt the suggestions contained in these comments so that the needs of people with disabilities are fully considered in the design, development, and fabrication of telecommunications products and services.

4. It has become clear through WGBH's decades of service in the field that people with disabilities want and deserve access to all the benefits of this country's rapidly expanding media and telecommunications technologies. Our experience has also shown us that, though many access challenges and obstacles are apparent as new technologies are introduced, hard work by innovative public and private sector individuals and organizations can overcome most of these barriers. It is even more apparent that a "level playing field" is exponentially easier and cheaper to achieve when access is designed into a product or service at the beginning rather than retrofitted onto it later.

II. Adoption of Access Board Guidelines

5. We strongly urge the Commission to adopt the Section 255 guidelines which were issued by the Architectural and Transportation Barriers Compliance Board (Access Board) on February 3, 1998. Congress had given the Access Board the primary authority to draft those guidelines, which should now be enforced by the FCC. Although the Access Board guidelines apply to equipment manufacturers, we recommend that the FCC apply these as well to service providers. The guidelines are comprehensive, and are the product of the Telecommunications Access Advisory Committee, which consisted of representatives from both consumer and industry organizations. In addition to the guidelines on achieving accessibility, we especially urge the FCC to adopt and enforce the following guidelines for both service providers and equipment manufacturers:

- a) Where market research on products or services is performed, individuals with disabilities should be included in the populations researched;
- b) Where product design trials and pilot demonstrations are conducted, individuals with disabilities should be included in these activities;
- c) Reasonable efforts should be made to validate access solutions through testing with individuals with disabilities or related organizations;
- d) Manufacturers and service providers should be required to provide access to product and service information and documentation on products and services and their accessibility features, including information contained in user and installation guides. To the extent that such information is made available to the general public, it should be made available in accessible formats or modes upon request, at no extra charge. Manufacturers should also include the name and contact means for obtaining information about (i) accessibility features and (ii) how to obtain documents in alternate formats, in general product information. Additionally, customer and technical support provided at call and service centers should be accessible by people with disabilities. For people who are deaf or hard of hearing, captioning on video cassettes (or other video media such as CD-ROMs or DVDs) containing product instructions, direct TTY access to customer service lines, text transcriptions for audio output on essential product-related World Wide Web postings, and automated TTY response systems that detect whether a caller is using voice or TTY and which enable the caller to complete the call in an accessible format, should be used to comply with these access requirements. For people who are blind or visually impaired, video description on video cassettes (or other video media such as CD-ROMs or DVDs) containing product instructions, and essential product-related World Wide Web sites made accessible via guidelines developed by the World Wide Web Consortium, should be used to comply with these access requirements;

e) The Access Board guidelines make clear that in addition to covering new products, Section 255 covers existing products that "undergo substantial change or upgrade, or for which new releases are distributed." The changes to which this statement refers are those that affect the functionality of the product, rather than cosmetic changes. It is critical for both manufacturers and service providers to consider disability access as they make substantial changes or upgrades to their public offerings;

f) The Access Board's guidelines do not permit manufacturers to make changes that reduce access to products. This is intended to ensure that the needs of individuals with disabilities are not neglected as improvements and upgrades to products and services are performed. Although innovation should not be stifled, the FCC should ensure that where improvements are made to products and services, access functions will be maintained. While the forms of achieving access may need to change, there must be assurance that some means of effective access continues to be available;

g) The Access Board's guidelines set forth certain technical standards for compatibility with specialized customer premises equipment, including compatibility with TTYs and hearing aid compatible telephones. These, too, should be adopted in the FCC's final rules.

h) The FCC's proposed rules say that software will be covered only if the software is included with a telecommunications product. If it is marketed separately, the FCC has proposed that it not be covered by Section 255. We oppose this interpretation of Section 255. Rather, so long as software has functions that are integral to the provision of telecommunications, it should be covered under the FCC's new rules. This would be consistent with the Access Board guidelines which cover software, hardware, or firmware that are integral to telecommunications and CPE equipment, as well as functions and features built into the product and those provided from a remote server over a network.

III. Universal Design

6. We support the FCC's decision to require an assessment of accessibility and compatibility for each product. This is what Section 255 requires, and as stated in the Access Board guidelines, the assessment as to whether access can be achieved "cannot be bypassed simply because another product is already accessible." Rather, the goal of Section 255 is to achieve, where readily achievable, universal design for as many disabilities (and non-disabled people) as possible. Only if that is not achievable, is it reasonable to view the overall accessibility of the provider's products or services to determine how other functionally similar products and services can be made accessible.

IV. Enhanced Services

7. We are deeply concerned that enhanced services may not be covered under the FCC's new rules. The Telecommunications Act of 1996 emphasized the need to bring all the citizens of our country the benefits of advanced telecommunications technologies. The purpose of Section 255 was to ensure that this objective would be achieved for individuals with disabilities. This objective will be defeated if people with disabilities are provided only with access to little more than basic telephone service. Voice mail, interactive telephone prompt systems, and Internet telephony have already become mainstream services and are critical to successfully participating and competing in our society. These services must be made accessible if the true intent of Section 255 - to achieve universal telecommunications access - is to be realized.

V. Readily Achievable Determinations

8. Under Section 255, manufacturers must make their products accessible or compatible if it is readily achievable to do so. The "readily achievable" language is from the Americans with Disabilities Act (ADA) and involves a

balancing of the nature and costs of including an access feature with the overall financial resources of the covered entity (and the resources of its parent corporation, where applicable). We accept the FCC's suggestion that technical feasibility also may be considered in determining whether access to a product or service can be achieved. However, we oppose considering the extent to which an accessible product can be marketed (when compared to inaccessible products), and the extent to which the costs of providing access will be recovered, in readily achievable determinations. These are not permissible factors under the ADA, and should not be included in a readily achievable analysis under Section 255.

VI. Complaint Process

9. We oppose a rule that would require consumers to first receive approval from the FCC before being permitted to bring a formal FCC complaint. This is not a requirement for other formal complaints brought before the Commission and appears to be discriminatory against individuals with disabilities.

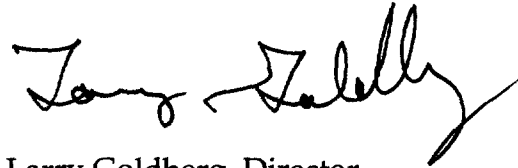
10. We do support the following FCC proposals concerning consumer complaints:

- a) There should be no filing fees for informal or formal complaints, and fees that currently exist for filing complaints against common carriers should be waived for complaints brought under Section 255. Waiving these fees would be in the public interest;
- b) There should not be any time limit for filing complaints, because it cannot be determined when a person with disabilities will discover that a product or service is inaccessible;
- c) Consumers with disabilities should be able to submit complaints by any accessible means available;
- d) Manufacturers and service providers should be required to establish contact points in their companies that are accessible to consumers with disabilities.

VII. Conclusion

11. We thank the FCC for the opportunity to submit these comments, and urge the FCC to act promptly in issuing rules that will fully ensure telecommunications access by individuals with disabilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Goldberg", with a stylized flourish extending from the end.

Larry Goldberg, Director

Media Access

WGBH Educational Foundation

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